



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN**

**GERALD C. MANN**  
**ATTORNEY GENERAL**

Honorable O. P. Lockhart, Chairman  
Board of Insurance Commissioners  
Austin, Texas

Dear Sir:

Opinion No. 0-4092

Re: Do the facts outlined disclose  
any violation of the laws or  
any ultra vires act or acts on  
the part of all or any of the  
three corporations in question?  
(National Hospitalization Sys-  
tem, Inc., St. Paul's Hospital,  
and Dallas Methodist Hospital)

Your letter requesting an opinion of this department  
regarding the above stated question reads as follows:

"As a predicate for the opinion hereinafter  
requested, we state the following facts:

"National Hospitalization System, Inc.,  
(hereinafter called 'System') is a Dela-  
ware corporation incorporated October 20,  
1930 under Chapter 65 of the Revised  
Code of Delaware with 6,000 shares of  
non par value common stock to be sold for  
\$15,000 and 500 shares of non par value  
preferred stock to be sold for \$25,000;  
3,608½ shares of the common stock being  
subscribed and actually paid for at \$2.47  
per share, \$8,943; and 62½ shares of the  
preferred stock being subscribed and fully  
paid for a total of \$3,125.00. The System,  
on September 3, 1932, was granted by our  
Secretary of State Texas Permit No. 7637,  
expiring ten years from that date, wherein  
it is authorized in Texas 'to act as agents  
for hospitals in securing members who  
desire hospitalization, and to transact all

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business incident thereto, together with such other rights and privileges as are conferred on foreign corporations by the laws of Texas, subject to compliance with the Constitution and laws thereof.' Its application for permit states, and it is a fact, that its principal office in Texas is in the Praetorian Building in Dallas, Texas; and the application recites also (which is a fact so far as we are advised) that it is at present transacting business in Texas only. The application recites 'Its business in the State of Texas is to be transacted throughout the State'. Attached to its application is certified copy of its original articles of incorporation showing that its principal office is in Dover, Kent County, Delaware; that its resident agent in that state is the United States Corporation Company, whose address is 19-21 Dover Green, Dover, Delaware. This is a typical Delaware charter, wherein it is authorized not only 'to act as representatives for hospitals in securing employees who desire hospital service and to transact all business incidental thereto', but it is also specifically authorized to do many other things not embraced in its Texas permit - in fact, nearly anything and everything throughout the chromatic scale of human and corporate activity.

"Its Texas activities consist principally or exclusively of serving as agent (or in whatever other capacity the facts hereinafter recited show) in the promotion and operation of a hospitalization service plan for or in cooperation with St. Paul's Hospital and Dallas Methodist Hospital, both of Dallas, Texas. Records in the Secretary of State's office show that each of these hospitals is incorporated under the laws of Texas as charitable and benevolent corporations with the power of

acquiring, erecting, owning, and operating upon a charitable basis a hospital or sanatorium in the city of Dallas, with a training school for nurses in connection therewith; St. Paul's Hospital being owned and operated by a Catholic order known as the Sisters of Charity, with its 'Central House' at Normandy, Missouri, and providing that 'the corporation shall have no capital stock'; that 'members of this corporation are Sisters of Charity . . . no person can be at any time a member of this corporation or have any interest in it unless she be a Sister of Charity of the same Society; and should any member of this corporation cease at any time to be a Sister of Charity she shall also cease to be a member of this corporation, and forfeit all claim she may have on account of her membership in the corporation. No formal act of resignation shall be necessary on the part of a retired or retiring member. Removal by death or by the Superiors at Normandy, Missouri, shall be sufficient. The interest of a member shall be unassignable and shall not pass to anyone other than the members of the corporation, by bequest, devise, descent, or voluntary or involuntary conveyance'; and the Dallas Methodist Hospital likewise has a charter providing that 'said corporation is formed for benevolent and charitable purposes. It shall have no capital stock . . . it shall never pay dividends or profits to anyone, but all funds deriving from the conduct of its business shall be used to pay expenses and for repairs and extensions . . . this charter is taken out in conformity with resolutions adopted by the North Texas Annual Conference of the Methodist Episcopal Church South, in session on October 29, 1920, and the affairs of same shall be directed by thirteen trustees and shall be under the control and ownership of the above named North Texas Annual Conference

and such other annual Conferences of such Methodist Episcopal Church South as may hereafter be permitted to participate by said North Texas Annual Conference, and said North Texas Annual Conference and other Conferences participating shall have the absolute right to confirm each and all the trustees hereinafter named, and their successors in trust. No trustee hereafter appointed shall have the right to hold office if confirmation shall be refused by said North Texas Annual Conference or Conferences participating'.

"The plan under which the hospital system mentioned above is operated is substantially as follows: National Hospitalization System, Inc., presumably advertises its services; it has several solicitors who contact prospects individually throughout the State and secure applications which are submitted at its office; if the Management of the System is convinced that the risk would be acceptable to the hospital, the application is then by it forwarded to the Superintendent of the hospital indicated on the application together with a remittance equivalent to 70% of the entire premium which is collected by the System's representative for the first monthly, quarterly, semi-annual, or annual period, as desired by the applicant. The other 30% of the gross premiums (both initial and subsequent) being retained by the System as its compensation or profit in the enterprise. If the Superintendent of the hospital approves the applicant for membership, he signs the form of policy or contract and returns it to the System, which then delivers it to the applicant. There is submitted with this letter a specimen

copy of the form of application and policy certificate (or other contract) used in the Dallas Methodist Hospital's end of the business. The application and policy or certificate used by St. Paul's Hospital are identical in form with the specimen copy submitted, except for substitution of the name of the hospital.

"The contracts between the System and the two hospitals, respectively, each provide that it can be voided by the hospital on ten days notice if the hospital discovers that any provisions of such contract have been violated by the System, in which event the hospital shall take over and perform all functions formerly performed by the System and enjoy all benefits and privileges formerly enjoyed by the System, and shall make all collections thereafter from the members and retain 100% of same as its own. The System agrees to maintain a total membership at each hospital of not less than 4,000 or more than 5,500, and if the membership falls below the minimum or exceeds the maximum, it constitutes a violation for which the hospital may take over as above indicated. The System writes both group and individual business. If a group has as many as ten members, premiums can be paid monthly; whereas individuals may pay only on the quarterly, semi-annual, or annual basis. The age limit is from 16 to 60 years, and the annual premium is \$9.00 per member for all ages.

"Neither of the hospitals has complied, or made any attempt to comply, with any of the provisions of Article 4590a or of Title 78, nor has the National Hospitalization System, Inc., and none of the three corporations or any of their employees has been licensed by this Department to conduct an insurance business or the business of an insurance agent.

"It is our opinion that each of the hospitals, severally, and its employees, is carrying on the business of group and

individual hospitalization insurance, in violation of the statutes of the State; and that the National Hospitalization System, Inc., is engaged in such hospitalization insurance business jointly with the respective hospitals in violation of such statutes, or that it and its employees and the employees of the hospitals are acting as insurance agents (local recording agents and/or solicitors) in violation of the terms of our statutes, which specifically forbid corporations from being licensed as insurance agents.

"We suggest that you consider what bearing, if any, the following statutory provisions, among others, have upon our questions: Articles 4590a, 4686, 4716, 5055, 5056, 5058, 5060, 5062a, 5062b, and 5068b.

"Aside from the question of whether these three corporations and their employees are unlawfully operating an insurance business or the business of insurance agents, it is our view also that each of the corporations is acting ultra vires, so as to justify appropriate quo warranto, injunction, or other proceedings against them.

"We are submitting herewith in support of our views a brief, which, while not exhaustive, may be helpful.

"Please advise us whether or not, in your opinion, the state of facts above outlined discloses any violation of our laws, either civil or criminal, or any ultra vires act on the part of all or any of the three corporations above named.

"If your answer is in the affirmative we request, pursuant to the statutes, that you institute such proceedings as may be justified, and this Department tenders to you its cooperation in every possible way in connection therewith."

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The word "insurance" is defined in Corpus Juris, Vol. 32, p. 975, as follows:

"Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency. As regards property and liability insurance, it is a contract by which one party promises on a consideration to compensate or reimburse the other if he shall suffer loss from a specified cause, or to guarantee or indemnify or secure him against loss from that cause. With some exceptions, particularly in the case of life insurance, insurance is a contract of indemnity. The term insurance denotes also the act of insuring by the contract here defined, as well as the system of business of which such contracts are the characteristic and vital element."

Couch on Insurance, Vol. 1, sec. 2, p. 3, defines the word "insurance" as follows:

". . . Strictly defined, insurance, . . . is a contract whereby one for a consideration agrees to indemnify another for liability, damage, or loss by perils to which the subject insured may be exposed. In . . . accident insurance it is the . . . health of the person that is the subject of the contract. . . . It also has been said that 'the word "insurance" in common speech and with propriety is used quite as often in the sense of contract of insurance, or act of insuring, as in that expressing the abstract idea of indemnity or security against loss.'

". . . In this connection it should be remembered that the character of insurance is not to be determined by the character of the company writing it, the nomenclature used, or the manner or mode of affording insurance, but by the nature of the contract actually entered into or issued. In other words, the true character of an alleged contract of insurance

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cannot be concealed or changed by the use or absence of words, it being immaterial whether or not the contract on its face purports to be one of insurance, since the court will look behind the terminology to ascertain what the parties intended to accomplish."

Article 4590a, Vernon's Annotated Civil Statutes, authorized the organization and incorporation of non-profit corporations for group hospital service. The act further provides in part:

"... That such corporations organized and operated under the provisions of this Act shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this Act and the provisions of Title 78 of the Revised Civil Statutes of Texas of 1925, are hereby declared inapplicable to corporations organized and/or operated under this Act."

However, such corporations are subject to certain supervision of the Insurance Department of this State. Under the facts stated in your letter, none of the above mentioned corporations are incorporated under Article 4590a, supra, or are attempting to operate under such statute.

In Texas Jurisprudence, Vol. 24, p. 651, § 3, notes 2 and 3, it is said:

"It is elementary, also, that insurance, other than that of life and accident where the result is death, is a contract of indemnity; and this, regardless of the fact that the sum to be paid is agreed upon in advance." (Citing Southwest National Bank v. Employers Indemnity Corp., 12 S. W. (2d) 189, 191; Fire Association of Philadelphia v. Strayhorn, 211 S. W. 447; Delaware Insurance Co. v. Hill, 127 S. W. 283.)

You have furnished us with a copy of the application and service contract used by the Methodist Hospital of Dallas, Texas, and state in effect that the applications and service

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contracts used by both of the above named hospitals are identical except as to the names of applicants, and of course, the name of the particular hospital making the service contract is set forth in said contract; otherwise, as above stated, the applications and service contracts are the same. The application and the service contract of the Methodist Hospital of Dallas, Texas, above mentioned, are as follows:

**Application:**

"I, the undersigned, do hereby make application for membership in the hospitalization plan of Methodist Hospital of Dallas, Texas, through the National Hospitalization System, Inc., the authorized agents and collectors of dues, payable in advance at the rate of: 75¢ Monthly \$2.25 Quarterly \$4.50 Semi-Annually \$9.00 Annually, the membership to become operative and in force immediately in case of accident, and after 10 days from date of contract in case of illness. Should I change my present employment my membership shall stay in full force so long as my dues are paid. Unemployed wives of husbands in groups are written on same basis as husbands, and are automatically cancelled when husband's contract lapses. Contract of member who becomes unemployed house-wife is automatically cancelled. Default in payment of dues for ten days automatically cancels the Service Contract I am to receive if accepted; if rejected, money paid on application will be refunded. I certify that I am in good health and without chronic ailment of any kind. I understand and agree that I am not to receive hospitalization service for any existing disease, ailment or injury nor complications arising therefrom, nor for tuberculosis, intoxication, nervous disorders, insanity, venereal diseases, syphilis, suicidal cases, or for any quarantinable disease; nor for diseases of or surgical operations for miscarriage, abortion, or troubles arising from this source, nor for complications arising from previous deliveries; however, a discount of 50% will be allowed off the regular hospital charges for a period of twenty-one days for such ailments as hernia, hemorrhoids, diseases or operations on

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uterus, tubes or ovaries after the contract has been in full force for one year and upon entering the second and following years.

Age \_\_\_\_\_ Date of last illness \_\_\_\_\_ 19\_\_\_\_ Nature \_\_\_\_\_

Attending physician \_\_\_\_\_ Reference \_\_\_\_\_  
who can verify my statements. I fully understand that any false statements regarding my health will not entitle me to membership. This application becomes a part of the Service Contract and is the basis on which it is issued.

I authorize \_\_\_\_\_ to deduct my dues each month.

Employed by \_\_\_\_\_  
or wife of \_\_\_\_\_

Name (print) \_\_\_\_\_  
Res. Address \_\_\_\_\_  
Bus. Phone \_\_\_\_\_ Res. Phone \_\_\_\_\_

The undersigned has read and fully understands the contents of this application and that any verbal promises or representations made by either party are here and now waived.  
Signed in duplicate.

Witness: \_\_\_\_\_ This \_\_\_\_\_ day of \_\_\_\_\_, 194\_\_\_\_

\_\_\_\_\_  
Representative (Signed) \_\_\_\_\_ Applicant

Make all checks payable to National Hospitalization System, Inc."

(On reverse side of application):

Mindor Dependent Children

Name \_\_\_\_\_  
Age \_\_\_\_\_ Sex \_\_\_\_\_  
Name \_\_\_\_\_  
Age \_\_\_\_\_ Sex \_\_\_\_\_  
Name \_\_\_\_\_  
Age \_\_\_\_\_ Sex \_\_\_\_\_

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"Remarks:

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Service Contract:

"DALLAS METHODIST HOSPITAL

Non-Transferable

Number

"SERVICE CONTRACT

"The METHODIST HOSPITAL of Dallas, hereinafter designated as 'Hospital', agrees and contracts with

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from  
 Hereinafter designated as 'Member' in consideration of payment of dues in advance to our duly authorized agents THE NATIONAL HOSPITALIZATION SYSTEM, INC., in installments as agreed upon when signing application, to give said Member the following Hospital Service, upon authorization of said Member's doctor, who must be a member of the Dallas County Medical Society. In case of emergency Member will be rendered first aid in the Emergency Department and will be cared for until the Member's doctor arrives.

"This Service Contract entitles Member to a private, or semi-private room (room not to exceed \$5.00 per day), operating room, anesthesia, general nursing, nursing supervision, technicians, dietitians, meals, routine medicine, surgical supplies, routine laboratory work, and all other usual hospital service during a period of hospitalization not to exceed twenty-one hospital days during the contract year, however, after Member has used the twenty-one days allowed, in case further hospitalization is necessary, a 33 1/3% discount from regular prices will be given for an additional thirty days. This does NOT include doctors' fees, prescriptions written by Member's doctor or on his orders, nor the service of a special private nurse, nor x-rays, oxygen tents, physiotherapy, intravenous medicines, anti-toxins, vaccines, serums, nor special laboratory work.

"It is further agreed that in the event the member suffers an accident outside of Dallas

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County, Texas, and it is necessary to have immediate hospitalization, the hospital agrees to reimburse the member to the extent of \$5.00 per day upon receipt of written proof from the hospital where the member was confined; however, in no event does this clause cover more than the twenty-one (21) hospital days allotted the member during any one contract year.

"If all the private or semiprivate rooms of the Hospital are occupied at the time Member is entered as a patient, then Member agrees to be placed temporarily in a room of different class until such room is available. Member agrees to be moved at the option of the Hospital. If the Member is furnished a semiprivate (two or three beds) room, the terms of this contract are thereby satisfied. Member is subject to regular charges in the Hospital after his doctor has given an order for his discharge from the Hospital. For all charges made by the Hospital for service not covered by this contract the Member agrees to pay the Hospital cash upon demand and in no event later than upon leaving the Hospital. Failure to pay such charges upon or before leaving the Hospital automatically terminates this contract as of date of such default, and all dues theretofore paid hereunder shall be retained by the Hospital.

"Default in the payment of dues for a period of TEN DAYS automatically cancels this contract, without written notice to Member, and dues received after said ten days are subject to rejection by the Hospital for any reason. The acceptance by the Hospital of a past due installment shall not be considered a waiver of any of the conditions of this contract.

"No service shall be provided Member for any chronic disease, ailment or injury nor complications arising therefrom, nor for tuberculosis, intoxication, nervous disorders, insanity, venereal diseases, syphilis, suicidal cases, or any quarantinable disease; nor for

diseases of or surgical operations for miscarriage, abortion, or troubles arising from this source, nor for complications arising from previous deliveries; however, a discount of 50% will be allowed off the regular hospital charges for a period of twenty-one days for such ailments as hernia, hemorrhoids, diseases or operations on the uterus, tubes or ovaries after the contract has been in full force for one year and upon entering the second and following years.

"Maternity cases are not included in this contract, but a discount of 50% from the flat Hospital charges will be allowed Member in good standing after having retained membership for a period of a year. Maternity cases can only be hospitalized under this contract for a period of Seven Days. If a longer stay is desired, no discount is allowed, for either the mother or the baby.

"Only persons between the ages of sixteen and fifty-five are acceptable as members. This contract is subject to cancellation when the holder reaches the age of sixty years. Minor dependent children under sixteen years of age are entitled to a 50% discount from the regular Hospital charges, provided both parents are members in good standing and provided further that their names and ages are listed on the application of their parents.

"Any Member who makes false statements regarding his or her health or age at time of signing application will not be entitled to hospitalization under this contract. The application which Member signs is a part of, and is the basis for, issuance of this contract.

"In case of epidemic, public disaster or other conditions causing an overcrowding of the capacity of the Methodist Hospital of Dallas to such a degree that it is not possible to provide accommodations, in such event the Methodist Hospital of Dallas agrees to refund twice the amount of dues received from Member during the

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Twelve Months immediately preceding; and such refund shall fully discharge the responsibility of the Methodist Hospital of Dallas.

"This contract does not apply to industrial hazards coming under the supervision of the Industrial Accident Board. Member agrees to pay the balance of the yearly dues when admitted to the Hospital. It is required that Member leave this Contract at the Admitting Office while confined, Contract will be returned upon discharge.

"METHODIST HOSPITAL OF DALLAS

By \_\_\_\_\_  
(SEAL) Superintendent"

(On the reverse side of the contract):

"I, the undersigned, do hereby make application for membership in the hospitalization plan of Methodist Hospital of Dallas, Texas, through the National Hospitalization System, Inc., the authorized agents and collectors of dues, payable in advance at the rate of: 75¢ Monthly \$2.25 Quarterly \$4.50 Semi-Annually \$9.00 Annually, the membership to become operative and in force immediately in case of accident, and after 10 days from date of contract in case of illness. Should I change my present employment my membership shall stay in full force so long as my dues are paid. Unemployed wives of husbands in group are written on same basis as husbands, and are automatically cancelled when husband's contract lapses. Contract of member who becomes unemployed housewife is automatically cancelled. Default in payment of dues for ten days automatically cancels the Service Contract I am to receive if accepted; if rejected, money paid on application will be refunded. I certify that I am in good health and without chronic ailment of any kind. I understand and agree that I am not to receive hospitalization service for any existing disease, ailment or injury nor complications arising therefrom, nor for tuberculosis, intoxication, nervous disorders, insanity, venereal diseases, syphilis, suicidal cases, or any quarantinable disease; nor for

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diseases of or surgical operations for miscarriage, abortion, or troubles arising from this source, nor for complications arising from previous deliveries; however, a discount of 50% will be allowed off the regular hospital charges for a period of twenty-one days for such ailments as hernia, hemorrhoids, diseases or operations on the uterus, tubes or ovaries after the contract has been in full force for one year and upon entering the second and following years.

Age \_\_\_\_\_ Date of last Illness \_\_\_\_\_ 194 \_\_\_\_\_ Nature \_\_\_\_\_

Attending physician \_\_\_\_\_ Reference \_\_\_\_\_  
who can verify my statements. I fully understand that any false statements regarding my health will not entitle me to membership. This application becomes a part of the Service Contract and is the basis on which it is issued.

I authorize \_\_\_\_\_ To deduct my dues each month.

Employed by \_\_\_\_\_ )  
or wife of \_\_\_\_\_ )  
Witness: \_\_\_\_\_

\_\_\_\_\_ Name (Print) \_\_\_\_\_  
\_\_\_\_\_ Res. Address \_\_\_\_\_  
\_\_\_\_\_ Representative \_\_\_\_\_  
\_\_\_\_\_ Bus. Phone \_\_\_\_\_ Res. Phone \_\_\_\_\_

The undersigned has read and fully understands the contents of this application and that any verbal promises or representations made by either party are here and now waived. Signed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_, 194\_\_.

(Signed) \_\_\_\_\_  
Applicant

Make all checks payable to  
National Hospitalization System, Inc."

From the facts stated in your inquiry, and from the application and service contract based thereon, it is apparent that the essence of the above mentioned hospitalization scheme is to indemnify, in part, the members against excessive cost of hospitalization contingencies. As in the case of burial

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associations where the funeral benefits are contracted to be furnished in kind and not paid in cash, the benefits here are unconditionally contracted to be either furnished in kind through hospital services and accommodations or, in the alternative, in certain instances based upon contingencies, the System and the Hospital agree that their option to refund to the member in lieu of such services a sum in cash equivalent to double the amount of dues paid for the first 12 months period. In the service contract of both hospitals, it is provided:

"... that in the event the member suffers an accident outside of Dallas County, Texas, and it is necessary to have immediate hospitalization, the hospital agrees to reimburse the member to the extent of \$5.00 per day upon receipt of written proof from the hospital where the member was confined; however, in no event does this clause cover more than the twenty-one (21) hospital days allotted the member during any one contract year."

We quote from 63 A. L. R. 713 as follows:

"Whether or not an association or corporation is carrying on an insurance business must be determined by the particular objects which it has in view, and not by abstract declarations of a general purpose to do acts of charity, so that, although the charter of a corporation declares that its object is 'the general good, and not individual profit,' it may be declared to be an insurance company. And, of course, the name by which a company or association, or its certificates or policies, is designated is not determinative of the question whether the organization is an insurance company or its contracts are in the nature of insurance policies. (Citing Southern Surety Company v. Austin, 17 S. W. (2d) 774). It is immaterial that the term 'insurance' nowhere appears in the contract. And the terms and mode of payment of the consideration are not determinative of the question whether the contract is one of insurance. It may be observed, also, that the question as to the

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nature of the insurance presented by an insurance contract is not to be settled by the nature and organization of the association, but rather by the terms and character of the contract itself."

The two above mentioned hospitals are incorporated as charitable and benevolent corporations, and are actually engaged in the insurance business and for profit. The facts stated in your letter further reflect that the Delaware corporation above mentioned is acting as agent for the hospitals.

We have carefully considered Title 78, Vernon's Annotated Civil Statutes, which contains the statutes relative to insurance in this State. Article 4716, Vernon's Annotated Civil Statutes, defines a health insurance company as follows:

"A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill health."

An accident insurance company is defined by Article 4716 as follows:

"An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water."

In view of the foregoing facts and statutes applicable thereto as set forth in Title 78, supra, it is our opinion that both of the above named hospitals are carrying on the business of health and/or accident insurance in contravention of the insurance laws of this State and that the above named Delaware corporation is unlawfully acting as their agent.

You further ask if there are any ultra vires act or acts on the part of all or any of the three corporations mentioned in your inquiry.

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It is stated in Texas Jurisprudence, Vol. 10, p. 894:

"There is a plain distinction between corporate acts which are invalid because they are beyond the powers of the corporation and acts which are illegal or contrary to public policy. This appears in the legal consequences ensuing from ultra vires and illegal transactions respectively. It is convenient to keep this distinction in mind by using the expression 'ultra vires' to designate only acts which are in excess of the corporate powers and to designate as 'illegal' those acts which a corporation is forbidden to do. Strictly speaking, the term "ultra vires" is used to designate the acts of corporations beyond the scope of their powers as defined by their charters or acts of incorporation." . . ."

Cook on Corporations, Vol. 2, 6th Ed., p. 1991, states:

"It rarely happens that the state objects to an ultra vires act. That it has a right to object by quo warranto is undoubted."

However, Article 4, Section 22 of the State Constitution provides that the Attorney General shall especially inquire into the charter rights of all private corporations, and in the name of the State take such action in the courts as may be proper to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freights or wharfage, not authorized by law, and shall whenever sufficient cause exists, seek a judicial forfeiture of such charters.

It is stated in Texas Jurisprudence, Vol. 5, p. 382:

"The legislature, deriving its authority from the constitution, has re-enacted these provisions, and they now appear in the Revised Statutes. This section of the Constitution not only confers powers upon the Attorney General, but it also imposes duties which must

be performed whenever facts arise which call for their performance.

"The duty to inquire into the charter rights of private corporations is to the end that when in his opinion it becomes necessary to take steps to prevent the abuse of corporate power, he may do so. This right exists in the very nature of the office, and could, it has been said, be exercised by the Attorney General in the absence of a constitutional provision expressly conferring it.

"The Supreme Court has expressed the belief that it was not the purpose of the constitution to confer on the Attorney General the right to maintain this type of equitable proceeding in every case in which a private corporation may exercise a power not conferred by law, without reference to the question as to whether such exercise is hurtful to some interest essentially public. Accordingly, it has been steadily held that suits of this character cannot be maintained when private rights alone are involved."

In support of the above statement, we quote from the case of State v. Farmers Loan & Trust Company, et al, (Sup. Ct. Tex.) 17 S. W. 60, as follows:

"It is not believed that it was the purpose, by the section of the constitution before referred to, to confer on the attorney general the power to institute and maintain an equitable proceeding such as this, in every case in which a private corporation may exercise a power not conferred by law, without reference to the question whether such exercise of power is hurtful to some interest essentially public; nor is it believed that it was thereby intended to confer on him the power to institute and maintain suits to prevent the exercise of a power not conferred by law on such corporations, except in cases in which it is made to appear that the exercise of the power will be hurtful to some interest essentially public. This view is

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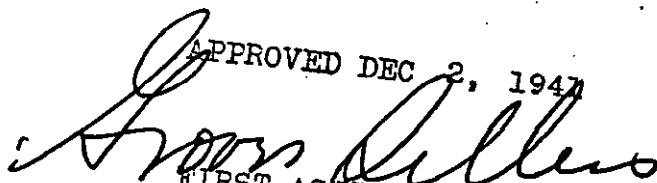
strengthened by the connections in the paragraph of the section of the constitution in which the general language which seems to be relied upon is found, for all these relate to matters in which the public have a direct interest. The right of the attorney general, in behalf of the State, through the courts, to prevent any private corporation from exercising any power not conferred by law, when this is hurtful to the public, or the assumption of a franchise, which in itself is a public wrong, cannot be questioned, and would exist from the nature of the office, in the absence of a constitutional provision expressly conferring it."


In view of the foregoing authorities and the facts stated in your letter, you are advised that it is our opinion that the acts of the above named hospitals engaging in the business of health insurance and the Delaware company acting as their agent as such are ultra vires acts.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED DEC 2, 1947  
  
 FIRST ASSISTANT  
 ATTORNEY GENERAL

By   
 Ardell Williams  
 Assistant

AW:GO

